

Fair Political Practices Commission
MEMORANDUM

To: Chairman Johnson, Commissioners Hodson, Huguenin, Leidigh and Remy

From: Lawrence T. Woodlock, Senior Commission Counsel
Scott Hallabrin, General Counsel

Subject: Adoption of Regulation 18361 and Amendment to Regulations 18361.7 and 18360(g).

Date: August 1, 2007

Proposed Commission Action: Adopt Regulation 18361 and Amendments to Regulations 18361.7 and 18360(g).

Reason for Proposal: Current regulations require the Executive Director to, among other things, conduct probable cause conferences, make probable cause findings, issue Accusations after finding probable cause, and issue subpoenas. The regulations prohibit the Executive Director from delegating these and other enforcement-related duties to anyone other than the General Counsel, except that he or she may delegate the authority to issue subpoenas to the General Counsel or the Chief of Enforcement. Anticipating that he might receive information on enforcement matters outside of the adjudicatory process, and recognizing that the General Counsel must be available to provide impartial advice to the Commission on enforcement matters, the Executive Director believes it is important to eliminate any doubt about the fundamental fairness and impartiality afforded to respondents in enforcement actions. This proposal gives the Executive Director the flexibility to delegate these enforcement-related duties to persons other than the General Counsel, when delegation of this authority will advance the agency's commitment to unbiased administrative decisionmaking. In addition, staff proposes to amend the reference in 18360(g) to refer to Regulations 18361.1 through 18361.8, to accurately reflect the numbering of these provisions after the 2004 repeal of former Regulation 18361.

Summary of Proposed Amendments: Regulations 18361.1 through 18361.8 establish procedures in administrative enforcement proceedings and the Executive Director's duties in this process. Regulation 18361.7 prohibits the Executive Director from delegating his or her duties under Regulations 18361.1 through 18361.8 to anyone other than the General Counsel (Regulation 18361.7(b)), and permits the Executive Director to delegate the authority to issue subpoenas to the General Counsel or the Chief of Enforcement. (Regulation 18361.7(a).)

The proposed amendments would replace the delegation provisions in Regulation 18361.7 with a broader discretionary power set forth in a new Regulation 18361, allowing the Executive Director to continue to delegate the above-referenced matters to the General Counsel, but expanding this discretion to also permit the Executive Director to delegate, in writing, his or her duties in these enforcement proceedings to an attorney in the Legal Division or, as provided under Regulations 18361.1, 18361.4, and 18361.7, to an administrative law judge.

The proposed amendment to Regulation 18360(g) is a non-substantive change that corrects references to the affected regulations after 2004.

Recommendation: Adopt Regulation 18361 and amendments to Regulations 18360 and 18361.7.